IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

RSA.No. 873 of 2006()

AS.191/2003 of ADL.SUB COURT, THALASSERY
OS.511/1995 of PRL.M.C.,KANNUR

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: APPELLANTS/DEFENDANTS 20,21 AND 23 TO 26

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1. BHANUMATHI KUMAR, D/O.KARUNAKARAN,
   AGED 64, V.R.PURAM, MALLESWARAM,
   BANGALORE-3.

2. M.V.ANIL KUMAR, S/O.KARUNAKARAN,
   AGED 42, PREM NIVAS, NEW THRIPPASAMBRA,
   BANGALORE.

3. M.V.RAJAN, S/O.KARUNAKARAN,
   AGED 60, V.R.PURAM, MALLESWARAM,
   BANGALORE.

4. M.V.MANIYAN, S/O.KARUNAKARAN,
   AGED 58, AISWARYA, NEAR TOWN HIGH SCHOOL,
   KANNUR.

5. M.V.VISWAKUMAR, S/O.KARUNAKARAN,
   AGED 52, AISWARYA, NEAR TOWN HIGH SCHOOL,
   KANNUR.

6. M.V.SUNIL KUMAR, S/O.KARUNAKARAN,
   AGED 47 YEARS, V.R.PURAM, MALLESWARAM,
   BANGALORE.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENTS:

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1. MOOLIYIL VAZHAYIL VIJAYAN,
   S/O.KALLYANI AMMAL, AGED 73, PENSIONER,
   KANNA VILLA, N.V.ROAD, NO.3 BAZAR,
   KANNUR.

2. GEETHA DEVADAS, D/O.VASUDEVAN,
   AGED 45, PALLIYIL THODIYIL P.O.,

PUTHIYARA, CALICUT.

3. A.P.SREEKUMAR, S/O.VASUDEVAN,
AGED 50, MANAGER, INDIAN OVERSEAS BANK,
VALAPATTANAM.

4. A.P.HARIKUMAR, S/O.VASUDEVAN,
AGED 48, PAYYANADAN, PALLIKKUNNU,
KANNUR.

5. SAIRA RAGHAVAN, G/D VASUDEVAN,
AGED 28, SAI PRABHA, NEAR T.K.ENGINEERS,
THANA, KANNUR.

6. SAIROOP RAGHAVAN, S/O.VASUDEVAN,
AGED 26, SAI PRABHA, NEAT T.K.ENGINEERS,
KANNUR.

7. SAISH RAGHAVAN, G/S. OF VASUDEVAN,
AGED 26, RESIDING AT DO.

8. P.K.SACHEENDRAN, S/O.PADMANABHAN,
AGED 52, 13TH GROSS HAL, II STAGE,
BANGALORE-8.

9. PUSHPA NATARAJ, D/O.PADMANABHAN,
AGED 48, KAILAS, AYODYA NAGAR,
MAHDIPATNAM, HYDERABAD.

10. P.K.SURESH, S/O.PADMANABHAN,AGED 50,
MADHAVAI, VALYASALA, TRIVANDRUM.

11. CHITHRA RAMACHANDRAN, S/O.PADMANABHAN,
AGED 50, WEST OF CHORD ROAD,
BASWAWESHAWARA NAGAR, BANGALORE.

12. PREMNATH.P.K., S/O.PADMANABHAN,
AGED 45, OYITTI HOUSE, THAVAKKARA, KANNUR.

13. REETHA ARUN KUMAR, D/O.PADMANABHAN,
AGED 42, RESIDING AT DO.

14. PREMALATHA RAMAKRISHNAN, D/O.SUMITHRA,
AGED 45, EAST JALLAI CALICUT THROUGH
P.A.HOLDER, P.SADANANDAN, S/O.ACHUTHAN,
AGED 71, GOVINDAPURAM, CALICUT.

15. SHYMA PREMKUMAR, D/O.SUMITHRA,
AGED 43, NAVAKSHARY MANSION, CHALAPPURAM P.O.,
KOZHIKODE.

16. M.V.LAXMANAN, S/O.NARAYANI,
AGED 73, KOILERI HOUSE, PAYYAMBALAM, KANNUR.

17. M.V.RAMACHANDRAN, S/O.NARAYANI,
AGED 66, SIVA VILAS, PAYYAMBALAM, KANNUR.

18. M.V.BHASKARAN, S/O.NARAYANI,
AGED 64, GOPAL STREET, ST.THOMAS TOWER,
BANGALORE.

19. M.V.GOPALAKRISHNAN, S/O.KARUNAKARAN,
AGED 62, MAIN ROAD, CHOMARAJPET,
BANGALORE.

20. M.V.NANDINI VALSAN,
D/O.LAXMI, AGED 64, BRINDAVAN,
THANA WEST, MAHARASHTRA.

21. M.V.SANKARAN, S/O.LAXMI,
AGED 55, C.I.T. COLONY, MYLAPUR,
MADRAS-4.

22. JEMUNA VASUDEVAN, D/O.LAXMI VASUDEVAN,
AGED 63, RESIDING AT DO.

23. PRABHA VIJAYARAGHAVAN, D/O.LAXMI
VASUDEVAN, AGED 45, INDIRA NAGAR,
STREET, MADRAS-20.

24. M.V.JANAKI, D/O.DEVAKI, AGED 77,
SHIVA VILAS, PAYYAMBALAM, KANNUR.

25. BHAGYALAKSHMI, D/O.JANAKI,
AGED 55, SREE VILLA, PUTHIYATHERU,
CHIRAKKAL, KANNUR.

26. M.V.PUSHPA, D/O.JANAKI, AGED 48,
P.O.TELCO WORK, JAMSHEDPUR, BIHAR.

27. M.V.MEERA, D/O.JANAKI,
AGED 50, SHIVA NIVAS, PAYYAMBALAM,
KANNUR.

28. VASANTHA.C.V., D/O.NARAYANI,
AGED 60, P.O.PUTHUPENARAM, OLAVAKODE,
PALAKKAD DISTRICT.

29. C.RAJAGOPALAN, S/O.NARAYANI,
AGED 56, VELVEE EAST, II STAGE,
BANGALORE.

30. C.MAHITHA, D/O.NARAYANI, AGED 55,
P.O.PUTHUPENARAM, OLAVAKKODE, PALAKKAD DISTRICT.

31. C.MOHANAN, S/O.NARAYANI, AGED 50,
SHELTER HOME, P.O. DO. DO.

32. C.RADHAKRISHNAN, S/O.NARAYANI,
AGED 48, VISHAKAPATTANAM, ANDHRAPRADESH.

33. VIJAYAN C., S/O.NARAYANI, AGED 45,
P.O.PUTHUPENARAM, OLAVAKKODE, PALAKKAD DISTRICT.

34. K.P.SADANANDA RAJ, S/O.REVATHI,
AGED 67, ACCOUNTANT GENERAL, P.O.MANNANGUDDA,
MANGALORE-3.

35. K.P.SARADA KUMAR, S/O.REVATHI,
AGED 66, K.K.HOUSE, P.O.NATTIKAI,
TRICHUR.

36. K.P.SAVITHRI, D/O.REVATHI,
AGED 65, NO.I.C.COLONY, POLLACHI-6.

37. K.P.SAROJA NARAYAN, D/O.REVATHI,
AGED 58, NEAR CHINA CLAY, KANNAPURAM,
KANNUR.

38. K.P.SURESH RAJ, S/O.REVATHI,
AGED 55, MANNAGUDDA POST, MANGALORE-3.

39. P.PRABHA, D/O.RAGHAVAN, AGED 45,
AUTO HOUSE, P.O.PALLIKKUNNU, KANNUR-4.

40. P.PREETHI, D/O.RAGHAVAN,
AGED 43, RESIDING AT DO.

41. P.V.REMA, D/O.SOUDAMINI, AGED 50,
KALAINNA GOWDER STREET, GOLICHETTIPALAYAM P.O.,
ERODE.

42. P.V.SASI, S/O.SOUDAMINI, AGED 50,
RESIDING AT DO.

43. P.V.CHANDRAN, S/O.SOUDAMINI,
AGED 49, RESIDING AT DO.

44. P.V.MANOHARAN, S/O.SOUDAMINI,
AGED 45, RESIDING AT DO.

45. PADMAVATHI.P.V., D/O.AMMALU,
AGED 73, HARI VILAS, PALLIKKUNNU P.O.,
KANNUR-4.

46. P.V.SUGADHA, D/O.PADMAVATHI,
AGED 43, RESIDING AT DO.

47. P.V.RAVINDRAN, S/O.AMMALU,
AGED 65, RESIDING AT DO.

48. SARADA CHANDRAN, D/O.KALLYANI,
AGED 75, HARI BHAGH, BARNASSERY,
KANNUR.

49. SARATH CHANDRAN, S/O.SARADA CHANDRAN,
AGED 48, RESIDING AT DO.

50. DINESH CHANDRAN, S/O.SARADA CHANDRAN,
AGED 46, RESIDING AT DO.

51. SUPRIYA PREMKUMAR, D/O.PREMKUMAR,
AGED 33, NARACHERY MANSION, CHALAPPURAM,
KOZHIKODE.

52. SAYISHA PREMKUMAR, D/O.PREMKUMAR,
AGED 28, RESIDING AT DO.

53. DIVYA PREMKUMAR, D/O.PREMKUMAR,
AGED 21, RESIDING AT DO.

54. THASSANNEE GOPINATH,
W/O.GOPINATH, AGED 37, MANISH COMPLEX,
10TH CONVENT ROAD, BANGALORE.

55. THASWAR GOPINATH, D/O.GOPINATH,
AGED 6 1/2 YEARS (MINOR), THROUGH GUARDIAN
MOTHER THASSANNEE GOPINATH, RESIDING AT DO.

56. K.P.SUREKHA, D/O.SAROJA NARAYANAN,
AGE NOT KNOWN, INDAKKAL, NEAR CHINA CITY,
KANNAPURAM, KANNUR.

57. K.P.SUDEEP, D/O.SAROJA NARAYANAN,
AGE NOT KNOWN, RESIDING AT DO.

58. K.P.SUCHITHRA, D/O.SAROJA NARAYANAN,
AGE NOT KNOWN, RESIDING AT DO.

59. DR.BINA RAVINDRAN, D/O.NALINI
RAVINDRAN, AGED 33, IST MAIN ROAD,
CIT COLONY, MYLAPORE, MADRAS.

60. DINESH RAVINDRAN, S/O.NALINI,
RAVINDRAN, AGED 30, RESIDING AT DO.

61. K.P.ASHA KUMARI, D/O.SAVITHRI,
AGED 44, PRARTHANA, MANCHAKKAL, MAHE.

62. HEMALATHA, D/O.SAVITHRI,
AGED 46, 146, CHOOLAINVEEDU,
KODAMBAKKAM, MADRAS.

63. HEMACHANDRAN, S/O.SAVITHRI,
AGED 45, OPPOSITE P&T COLONY,
KAITHAMPALAYAM ROAD, COIMBATORE.

64. HEMANTH KUMAR, S/O.SAVITHRI,
AGED 43, GANDHI MANGAM, PEELAMEDU,
COIMBATORE.

65. SREELATHA, D/O.SAVITHRI,
AGED 36, SWAGATH, VADUKKAPAYALAM,
POLLACHI.

66. M.K.PREMKUMAR, S/O.SARADA KUMAR,
AGED 51, ASST.ENGINEER, P.W.D.OFFICE,
CHEMGUKARU, TRICHUR.

67. M.K.PRASANNAKUMARI, D/O.SARADA KUMAR,
AGED 53, SANTHI, TRIVAMPADY, TRICHUR.

68. M.K.PRAMILA KUMARI,
D/O.SARADA KUMAR, AGED 53,
ADARSH, KALAMCHERY, COCHIN.

69. M.P.PREETHI KUMARI, D/O.SARADA KUMAR,
AGED 45, PREETHI NIVAS, KUTTANELLUR,
TRICHUR.

70. M.K.PRADEEP KUMAR, S/O.SARADA KUMAR,
AGED 43, SUN VIEW, NATTIKA, TRICHUR.

71. N.SHANMUGHA SUNDARAN,
S/O.NACHI MURTHI, AGED 32, KALLYANI GAUDER
STREET, VIKKAL VEEDU, ERODE.

72. N.RAMESH, S/O.NACHI MURTHI,
AGE NOT KNOWN, RESIDING AT DO.

73. SREEJA.P., W/O.SREELESH, AGED 24,
146, KODAMBAKKAM, CHENNAI.

74. CHANDRA MOHAN.N.V., S/O.VASUDEVAN,
AGED 52, CIT COLONY, ALWARPELI, CHENNAI.

75. PRADEEP, S/O.NANDINI,
AGED 36, VRINDAVAN, THANA WEST,
MAHARASHTRA.

76. DILEEP, S/O.NANDINI, AGED 38,
RESIDING AT DO.

77. ANIL KUMAR, S/O.PREMALATHA,
AGED 40, NARACASHERRY ESTATE OFFICE,
EAST KALLAI, KOZHIKODE-3.

78. REKHA, D/O.PREMALATHA, AGED 42,
RESIDING AT DO.

79. SAILESH, S/O.PREMALATHA,
AGED 38 YEARS, RESIDING AT DO.

80. SAIREENA, D/O.PREMALATHA,
AGED 27, RESIDING AT DO.

81. BALASUBRAMANIYAN, S/O.VASANTHA,
AGED 40 YEARS, GROSS STREET, BASAWANATH NAGAR,
CHENNAI-19.

82. HEMACHANDRY, D/O. VASANTHA,
AGED 36 YEARS, RESIDING AT DO.

83. MAMATHA CHANDRY, D/O.HEMACHANDRY,
AGED 23, RESIDING AT DO.

84. SHANKAR VISWANATHAN, S/O.VASANTHA,
AGD 42, RESIDING AT DO.

85. MURUGESH, S/O.VASANTHA,
AGD 36, RESIDING AT DO.

86. GAYATHRI, D/O.PRASANNA KUMARI,
AGED 25, SUN VIEW, NATTIKA, P.O.TRICHUR.

87. GEETHA,, D/O.PRASANNAKUMARI,
AGED 24, DO.

88. GOPI, S/O.PRASANNA KUMAR, AGED 23,DO.

89. BINDHU, D/O.PREMILA KUMARI,
AGED 23, DO.

90. PRAMOD, S/O.PREETHI KUMARI,
AGED 23, DO.

91. SEENA CHANDRAN, D/O.BHAGYALAKSHMI,
AGED 36.

92. HEMANTH KUMAR, S/O.BHAGYALAKSHMI,
AGED 33, RESIDING AT DO.

93. SUDHEEP NARAYANAN, S/O.PUSHPA,
AGED 29, JAMSHEDPUR, JARKHAND-831 003.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 873 OF 2006

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DATED THIS THE 9th DAY OF JULY, 2007

JUDGMENT

Defendants 20, 21 and 23 to 26 in O.S.511 of 1995 on the file of Munsiff Court, Kannur are the appellants. First respondent is the plaintiff and other respondents, the other defendants. First respondent instituted the suit seeking a decree for partition of plaint schedule property into 45 and allotment of one such share to him with share of profits. Plaint schedule property was obtained by Kottiyath Vazhayil Achuthan and his sister Devaki under Ext.A1 sale certificate in court auction sale in O.S.538 of 1931. They were the decree holders auction purchasers. Kottiyath Vazhayil Achuthan was described as the Karanavan of the Tavazhy in Ext.A1 and plaint schedule property is a Tavazhy property and was managed by subsequent Karanavan Kunhiraman and on the death of Kunhiraman the property devolved on plaintiff and defendants who are the only members of the Tarwad and each of them is entitled to a share and therefore the properties are to be divided and their share to be separated. Appellants filed a written statement contending that the property was not obtained by the Tarwad but by

Gopalan and Devaki and it is their separate property and therefore as members of the Tarwad, plaintiff is not entitled to claim any share.

2. Learned Munsiff framed the necessary issues. Exts.A1 to A5 and Ext.B1 to B1(a) were marked and PW1 was examined. Learned Munsiff on the evidence, found that, plaint property originally belonged to the Tarwad as it was purchased by Achuthan, the then Karanavan along with his sister Devaki as proved by Ext.A1 and they were the decree holders in O.S.457 of 1957 and Achuthan was shown as the Tavazhy Karanavan. Relying on Ext.A4 judgment in O.s.457 of 1957, it was found that derivation of title in Ext.A4 prove that plaint schedule property belonged to the Thavazhy. It was also found that fact that Gopalan died before 1931 before the commencement of Madras Marumakathayam Act was not disputed. Learned Munsiff held that when the legal position was brought to the notice of the plaintiff and defendants, it was conceded and it was submitted that they have no objection to pass a preliminary decree in respect of half right which devolved on the Tavazhy on the death of Gopalan and the remaining half right belonged to only Devaki and plaintiff did not have any claim over that right. Accepting

the position a preliminary decree for partition was passed.

3. Appellants challenged the decree and judgment before Sub Court, Thalassery in A.S.91 of 2003. It was contended before the learned Sub Judge that no concession was made and therefore the preliminary decree passed by the trial court is not sustainable. Learned Sub Judge on reappreciation of facts and evidence found that though PW1 was examined in chief, he was not cross examined as the legal position was not disputed. It was found that Gopalan died prior to 1931, before commencement of the Madras Marumakkathayam Act and so only his half right devolved on the Thavazhi which is available for partition among the Tavazhy members. It was on that basis confirming the preliminary decree and judgment, appeal was dismissed. It is challenged in the second appeal.

4. Learned counsel appearing for the appellant argued that there is no independent finding by the courts below with regard to devolution of right except the concession made by the counsel. It was also argued that there is no finding on the claim of adverse possession raised by appellants and therefore the preliminary decree granted is not sustainable.

5. On hearing the learned counsel and going through the

judgments of the courts below I do not find any substantial question of law involved in the appeal. The fact that Gopalan died prior to 1931 was not disputed. The legal consequences of death of the then Karanavan which was prior to the commencement of the Madras Marumakkathayam Act as found by courts below was also not disputed. Judgments of the courts below establish that the legal position was admitted by parties and PW1 was not cross examined as it was admitted that on the death of Gopalan his half right devolved as Thavazhi, which is available to be divided between the members of Tavazhy as has been done by the courts below. Hence no substantial question of law is involved in the appeal on that aspect.

6. Though learned counsel argued that there is no finding on the question of adverse possession, it is not disputed that there was no plea of ouster. So long as plaintiff and defendants are co-owners, unless there is a plea of ouster, to the knowledge of the non possessing coowner, the plea of adverse possession will not stand. In law possession of one co-owner could only be for and on behalf of the other co-owners, unless there is an ouster to the knowledge of other coowners. As ouster was not pleaded, the plea of adverse possession is not sustainable. As

there is no substantial question of law involved in the appeal, it is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-